



WORKERS' COMPENSATION REVIEW COMMITTEE

Wednesday, September 8, 2021
Roughrider Room, State Capitol
Bismarck, North Dakota

Senator Scott Meyer, Chairman, called the meeting to order at 10:00 a.m.

Members present: Senators Scott Meyer, JoNell A. Bakke, Curt Kreun; Representatives George Keiser, Dan Ruby, Mary Schneider*

Members absent: None

Others present: See [Appendix A](#)

*Attended remotely

COMMITTEE RESPONSIBILITIES

Mr. Christopher S. Joseph, Counsel, Legislative Council, presented a memorandum entitled [Workers' Compensation Review Committee - Background Memorandum](#). The memorandum sets forth the background for the committee's statutory directive to review workers' compensation claims brought to the committee, the reports to be received by the committee, and the committee's interim history. He noted interim committee rules are set forth in a memorandum entitled [Supplementary Rules of Operation and Procedure of the North Dakota Legislative Management](#), which was distributed to the committee members.

BACKGROUND AND 2021 LEGISLATIVE REVIEW

Mr. Bryan Klipfel, Executive Director, Workforce Safety and Insurance, presented testimony ([Appendix B](#)) regarding an overview of Workforce Safety and Insurance (WSI) and WSI trends and initiatives.

Ms. Jodi Bjornson, Chief Counsel, Workforce Safety and Insurance, presented testimony ([Appendix C](#)) regarding 2021 legislation relating to the state's workers' compensation system.

PERFORMANCE EVALUATION

Mr. Daniel Cox, Quality Assurance Audit Manager, State Auditor's office, presented testimony regarding the elements selected by the State Auditor for inclusion in the 2022 quadrennial performance evaluation. He noted:

- Under North Dakota Century Code Section 65-02-30, the committee may select no more than four elements to be evaluated in the performance evaluation and the State Auditor may select additional elements, but the total number of elements, including those selected by the committee, may not exceed eight.
- The State Auditor selected the following elements for the 2022 quadrennial performance evaluation:
 - Whether COVID-19 WSI claims were evaluated, processed, and occur during the appropriate period of time according to Executive Orders 2020-12, 2020-12.1, and 2020-12.2; and
 - Whether WSI identifies recurring incidents in certain industries or with certain employers and reach out to assist those employers or industries.
- The committee may consider whether it has any interest in having the State Auditor include a followup of specified recommendations from the 2018 report as an element to the 2022 performance evaluation.

It was moved by Representative Keiser, seconded by Senator Kreun, and carried on a voice vote that the State Auditor should not include a followup of specified recommendations from the 2018 report as an element to the 2022 performance evaluation.

Mr. Tim Wahlin, Chief of Injury Services, Workforce Safety and Insurance, presented testimony ([Appendix D](#)) regarding the status of the most recent WSI performance evaluation and proposed elements for inclusion in the 2022 WSI performance evaluation. He noted:

- Since 2006, there have been five performance evaluations conducted by an outside firm with expertise in workers' compensation and industry standards.
- For the last five performance evaluations, the average cost of the performance evaluations was \$187,200, ranging from \$91,290 to \$284,939. These costs are paid from the WSI fund.
- In addition to the performance evaluation, WSI is subject to various audits, thereby providing other accountability mechanisms over WSI. First, WSI is subject to an annual financial audit in which the auditing firm is selected by the State Auditor through a formal bidding process. Second, WSI has an Internal Audit Department to plan, direct, and complete internal audits and compliance reviews. This department reports administratively to the Director of WSI and functionally to the WSI Board Audit Committee. Thirdly, WSI is statutorily subject to review at the purview of the Legislative Audit and Fiscal Review Committee as well as the State Auditor.
- Recommendations received as a result of the performance evaluation in more recent reviews have not been as substantive in nature when compared to previous recommendations.

Committee members questioned whether there are barriers to retaining legal representation in WSI claims or in appeals against WSI because the inability to find legal representation willing to take on WSI seems to be a reoccurring issue voiced by injured workers. Mr. Wahlin noted:

- In the early 1990s, the state experimented with paying attorneys representing claimants irrespective of whether the claimant ultimately lost or prevailed in the appeal. Under that system, WSI's case numbers were substantially higher but better results were not achieved because everything was appealed because there was a paycheck at the end, irrespective of the outcome. That system was amended as part of the 1995 reform to the current method.
- There are six or seven attorneys in the state who handle workers' compensation law. Those attorneys represent injured workers at hearings and appear to be available for cases.
- There does not appear to be an attorney shortage within the scope of workers' compensation law in North Dakota.
- Regarding attorney reimbursement and pay for taking workers' compensation cases, the Legislative Assembly changed the law a few sessions ago to provide if an injured worker has a successful claim or appeal, whether at the administrative law level or in court, WSI will pay the attorney.

It was moved by Representative Schneider, seconded by Senator Bakke, and failed on a roll call vote that exploring the possible barriers and deterrents to legal representation within the WSI claims and appeals process be selected as an element for inclusion in the WSI performance evaluation. Senator Bakke and Representative Schneider voted "aye." Senators Meyer and Kreun and Representatives Keiser and Ruby voted "nay."

It was moved by Representative Keiser, seconded by Senator Kreun, and carried on a roll call vote that the committee not select any elements for inclusion in the WSI performance evaluation. Senators Meyer, Bakke, and Kreun and Representatives Keiser and Ruby voted "aye." Representative Schneider voted "nay."

It was moved by Representative Ruby, seconded by Representative Keiser, and carried on a roll call vote that the Legislative Council staff be requested to prepare a bill draft repealing Section 65-02-30 relating to the quadrennial performance evaluation of WSI. Senators Meyer, Bakke, and Kreun and Representatives Keiser and Ruby voted "aye." Representative Schneider voted "nay."

REPORTS

Mr. Timothy J. Dawson, Director, Office of Administrative Hearings, presented testimony ([Appendix E](#)) providing statistical information regarding results under the case processing standards and policies. He noted:

- In response to statistical information showing a longer period from the time the Office of Administrative Hearings (OAH) receives a file to the issuance of a decision, OAH has taken several steps to shorten the time without sacrificing quality.
- OAH now keeps a rolling 6-month average of time from assignment to decision for each administrative law judge and uses the 215-day mark as a guide for each administrative law judge.

- OAH has contracted with two additional administrative law judges and offers additional capacity if the number of hearings requested increases.
- For the 6-month rolling average for the quarter ending on June 30, 2021, the average number of days from when a request for an administrative law judge is received, to when a decision is issued, is 172 days, 43 days below the 215-day goal.

Ms. Bjornson presented testimony ([Appendix F](#)) regarding the statistical information of the results under the case processing standards and policies. She noted WSI is very pleased with the fewer number of days it now takes for a decision to be issued by OAH and appreciates the efforts OAH has made to improve efficiency.

CLAIM REVIEW PROCESS

Mr. Joseph presented information ([Appendix G](#)) regarding the review procedure and application forms used by the Workers' Compensation Review Committee during the 2019-20 interim. He noted:

- The application packet has included a cover letter explaining the application process and eligibility requirements, a copy of Section 54-35-22, a "Release of Information and Authorization" form, and a "Review Issue Summary" form.
- The application packet is mailed to injured workers who had received a final determination regarding a North Dakota workers' compensation claim within the allotted time.
- To notify the public of the committee's activities and to solicit injured employees to submit claims for review, the committee also has published the application packet on the legislative branch website.

It was moved by Representative Keiser, seconded by Senator Kreun, and carried on a voice vote that the committee continue to use the forms and process used during the previous interim, add language to the cover letter stating an injured worker's in-person testimony is preferred but virtual testimony is possible, and send the application packet to claimants who have completed the Decision Review Office process during the last 36 months.

No further business appearing, Chairman Meyer adjourned the meeting at 2:00 p.m.

Christopher S. Joseph
Counsel

ATTACH:7